



## REFERENCE GUIDE

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### **GRADE RETENTION ENTITLEMENTS FOR PREVAILING RATE FIREFIGHTERS**

This reference guide provides basic information about the application of grade retention to Federal Wage System employees in firefighter positions.

1. **BACKGROUND.** Downsizing within the Department of Defense has caused wage grade (WG) employees to be placed in firefighter positions as a result of reductions in force. As firefighters, these employees are required to remain at their duty stations for periods in excess of 8 hours a day in a standby or on-call status. They also are, for the most part nonexempt under the Fair Labor Standards Act (FLSA).

2. **BASIS FOR PAY DETERMINATION.** Under 5 U.S.C. 5362(a)(2), during the 2-year grade retention period such employees are treated as Federal Wage System (FWS) employees for all pay administration purposes including wage adjustments, WGIs, and premium pay. The pay entitlements are different for employees covered under the FWS and General Schedule (GS). Firefighters under the General Schedule receive annual premium pay for standby duty instead of premium pay for regularly scheduled overtime work, night, holiday, and Sunday work. Employees covered by the FWS are excluded specifically from receiving annual premium pay under 5 U.S.C. 5541(2)(C)(xi). Instead, FWS employees are compensated for remaining at their duty posts for periods in excess of 8 hours in a day under 5 U.S.C. 5544. They also receive shift differential, Sunday and holiday premium pay, and environmental differential pay, as appropriate. Overtime is paid for work exceeding 40 hours per week. They do not receive pay for eating and sleeping periods of up to eight hours in a 24-hour shift. Leave is earned based on a 40 hour-per-week rate.

a. **OVERTIME IN EXCESS OF 40 HOURS/WEEK.** Subparts 551.541 and 551.501(a)(5) of 5 CFR, covering special overtime pay provisions, and listing basic provisions of overtime pay for nonexempt employees, state that employees engaged in fire protection activities who do not receive annual premium pay will be paid at a rate of 1.5 times their hourly regular rates of pay for hours of the tour of duty in excess of 40 hours in a workweek, not in excess of 8 in a day.

b. NO PAY FOR EATING AND SLEEPING. When determining hours of work, 5 CFR part 551, Pay Administration under the Fair Labor Standards Act [(551.432(b), (c), and (d))] allows agencies to deduct up to 8 hours out of each 24-hour shift for sleep and meal periods if employees are engaged in fire protection duty and do not receive annual premium pay. Sleep time will not exceed 8 hours; and if sleep time is interrupted by a call to duty, time spent on duty will be hours of work. (A minimum of 15 minutes must be worked, paid in 15 minute increments rather than 2 hours call-back time.)

c. NO OVERTIME PAY CAP. The overtime pay cap discussed in 5 CFR 550.113 for employees whose rates of basic pay exceed that of GS-10/01 does not apply to employees subject to the overtime pay provisions of the FLSA or 5 CFR 551.501(d). Therefore, the pay of most FWS firefighters is not capped.

d. NIGHT SHIFT DIFFERENTIAL. Night shift differential is a differential paid to a WG employee when the majority of regularly scheduled, non-overtime hours of work fall between 3 p.m. and 8 a.m. A differential of an additional 7.5 percent will be paid if the majority of the hours fall between 3 p.m. and 12 a.m. The differential is an additional 10 percent if the majority of the hours fall between 11 p.m. and 8 a.m. The differential will be paid for the entire shift.

e. ENVIRONMENTAL DIFFERENTIAL. When FWS firefighters actually are required to fight fires, they are entitled to the appropriate differential as described at 5 CFR 532, subpart E, Appendix A.

3. PAY DETERMINATION. Based on the above information, WG firefighters, who work three 24-hours shifts per week should be paid as follows:

Day 1 and Day 2	0745-2345	Paid for 16 hrs work (time includes 2 30-minute paid meal breaks) Pay - reg rate + 7.5% night dif (+ holiday pay NTE 8 hours + Sunday pay, as appropriate)
	2345-0745	Non-paid sleep time unless sleep time is interrupted for at least 15 min, then paid in 15 min increments
Day 3	0745-1545	Paid for 8 hrs work (time includes 1 30-min paid meal break) Pay = reg rate only (+ holiday pay NTE 8 hrs + Sunday pay NTE 8 hrs, as appropriate)
	1545-2345	Paid for 8 hrs overtime work (time includes 1 30-min paid meal break) Pay = reg rate x (times) 1.5 (OT) (NOTE: holiday pay is limited to 8 hrs,

Sunday premium pay is paid only for non-overtime hours of work performed on Sunday)

2345-0745 Non-paid sleep/meal time unless sleep time is interrupted for at least 15 min, then paid in 15 min increments

(NOTE: any work during normal non-pay sleep/meal time of at least 15 min duration will be paid as overtime)

4. LEAVE ACCRUAL AND USE. As these employees receive overtime pay based on a 40-hour workweek, leave will also be accrued/earned based on the regular 40-hour workweek:

a. Annual leave:

- (1) 4 hrs/pp for service less than 3 years,
- (2) 6 hrs/pp for service between 3 and 15 years, and
- (3) 8 hrs/pp for service over 15 years

b. Sick leave: a rate of 4 hrs/pp

The amount of leave used will depend on the day it is taken. The first two days of each week consist of 16 regularly scheduled hours of work; leave used on these two days would be 0 - 16 hrs with a full day equal to 16 hrs. The last day of the week normally consists of 8 hours of regularly scheduled hours of work and 8 hours of regularly scheduled overtime (OT). Leave requested for this day would total between 0 - 8 hrs with a full day equal to 8 hrs. No leave is charged for hours of regularly scheduled overtime that are not worked. If paid leave is used during first 40 hrs of the workweek (day 1, 2, and first 8 hrs of day 3), and OT is worked on day 3, then OT rates will be paid for hours > 40. If leave without pay (LWOP) is used during first 40 hrs of the workweek and OT is worked, OT will be paid only for those hours which exceed the period of LWOP. Regular rates will be paid for hours corresponding to hours of LWOP.